IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 3527 of 2004(T)

AGAINST THE ORDER IN IA.2322/2002 IN CMA.664/2002 of II ADDL. DISTRICT COURT, PALAKKAD

.....

PETITIONER:

BALAN, S/O. MURUKANDI,
THOZHUTHUMPARA, KIZHAKKANCHERRY (VIA),
ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

----

1. **BABY, S/O. PAILY,**
   ERIKKINCHIRA, KIZHAKKANCHERRY (VIA),
   KORENCHERA POST, ALATHUR TALUK, PALAKKAD DISTRICT.

2. **V.K.SUBHASH, S/O. KRISHNANKUTTY,**
   VATTUPURA, KORENCHIRA, KIZHAKKENCHERRY (VIA),
   ALATHUR TALUK, PALAKKAD (DIST.).

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR for R1
SRI.GEEN T.MATHEW
SMT.C.R.SARADAMANI for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.3527/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE EA.332/2000 IN E.P.NO.17/99 IN OS.NO.447/93 ON THE FILE OF SUBORDINATE JUDGE'S COURT AT PALAKKAD.**

EXT.P2: **COPY OF THE COMMON ORDER DTD. 21/12/01 PASSED IN EAS NO.332,571 AND 619 OF 2000 IN EP.NO.17/1999.**

EXT.P3: **COPY OF APPEAL MEMORANDUM IN CMA 664/02 ON THE FILE OF THE DISTRICT COURT, PALAKKAD.**

EXT.P4: **COPY OF I.A.NO.2322/02 IN CMA NO.664/02.**

EXT.P5; **COPY OF THE OBJECTION TO I.A.2322/02.**

EXT.P6: **COPY OF THE ORDER DTD. 9/07/02 PASSED IN I.A.2322/02 IN CMA 664/02 ON THE FILE OF DISTRICT COURT,PALAKKAD.**

EXT.P7; **COPY OF THE JUDGMENT DTD. 9/07/03 PASSED IN CMA 664/03 ON THE FILE OF DIST. COURT, PALAKKAD.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.3527 of 2004

- -

Dated: 1st August, 2007

JUDGMENT

In this Writ Petition the judgment-debtor impugns the order of the District Judge refusing to condone the delay of 141 days caused in the matter of filing C.M.Appeal No.664/02. The C.M.A. was directed against the order of the execution court dismissing E.A.332/2000 which was an application under Order XXI Rule 89. I have already found in the common order in C.R.P.Nos.1027/02 and 1039/02 that the execution court had no power to condone the delay caused in the matter of filing applications for setting aside the sale. In that view of the matter, no useful purpose will be served by filing the C.M.Appeal even within time. The issue whether under Section 47 C.P.C. relief could be granted to the petitioner has been left open to be decided in E.A.No.619/2000. In view of the decision taken in the Civil Revision Petitions, the Writ Petition will stand dismissed. The learned Subordinate Judge is directed to explore the possibility of a rapprochement of the issue between the parties before E.A.No.619/2000 is heard and decided.

srd **PIUS C.KURIAKOSE, JUDGE**